



Decision

by

the FIBA Disciplinary Panel established in accordance with
Article 8.1 of the
FIBA Internal Regulations governing Anti-Doping
in the matter

Onur Bolat
(born 13 September 1980)

(“the Player”)
(Nationality: Turkey)

Whereas, the Player underwent a doping test on 17 January 2009 in Istanbul (Turkey) after the Turkish 2nd Division game between Beykoz BC and Uşak Belediye;

Whereas, the analysis of the Player's sample was conducted at the Laboratory of Ankara (Turkey) which is a WADA-accredited laboratory. The sample showed the presence of metenolone, a prohibited substance under the applicable rules;

Whereas, the Player waived his right to request an analysis of the B sample;

Whereas, on 16 April 2009 the Disciplinary Commission of the Turkish Basketball Federation decided to impose an eight month suspension on the Player starting from 5 February 2009; the Player did not file an appeal against such decision;



Whereas, on 8 July 2009 the Player through his legal counsel, Mr. Ersü Oktay Huduti, exercised his right to be heard via telephone conference by a FIBA Disciplinary Panel composed of Mr. Antonio Mizzi, President of FIBA's Legal Commission and of Dr. Heinz Günter, Vice President of FIBA's Medical Commission. Mr. Amir Ibrahim, FIBA's sport development assistant, and Dr. Dirk-Reiner Martens, FIBA Legal Advisor, were also in attendance;

Whereas, the Player

- did not contest the result of the test;
- argued that upon recommendation of a trainer in a fitness center he purchased “over the counter” the product “Primobolan Depot”;
- argued that the presence of metenolone in his sample shall be attributed to the two injections of “Primobolan Depot” that he received with the assistance of his trainer some time in September 2008;
- argued that he suffers from a chronic medical condition in his knees and that he received treatment at the medical clinic of the Ankara University in October 2007 as well as in June 2009;
- argued that he was unaware of the fact that “Primobolan Depot” may contain prohibited substances and that he bears no fault for the anti-doping rule violation;
- stated that since he was suspended in Turkey on 5 February 2009 he did not participate in any competition organised by FIBA or by a national member federation affiliated to FIBA;
- stated that he has been playing for approx. ten seasons for clubs participating in the Turkish 2nd Division;
- stated that he had no intention to enhance his performance;
- affirmed that he had committed no previous anti-doping rule violation.

Now, therefore the Panel takes the following:



DECISION

A period of two (2) years ineligibility, i.e. from 5 February 2009 to 4 February 2011, is imposed on Mr. Onur Bolat.

Reasons:

1. The Player has committed an anti-doping-rule violation pursuant to Article 2.1 of the FIBA Internal Regulations governing Anti-Doping (the "FIBA ADR") since metenolone, a prohibited substance listed in WADA's 2009 Prohibited List under letter S.1.1a (Exogenous Anabolic Androgenic Steroids), was found in his urine sample. This fact remained uncontested.
2. According to Article 10.2 of the FIBA ADR

"The period of Ineligibility imposed for a violation of Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), [...] shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Articles 10.4 and 10.5, or the conditions for increasing the period of Ineligibility, as provided in Article 10.6, are met:

First violation: Two (2) years' Ineligibility."

3. The Panel initially notes that, contrary to the explanation provided on 4 June 2009 by the Turkish Basketball Federation as regards the decision of its Disciplinary Commission, Article 10.4 of the FIBA ADR is not applicable to the present case since metenolone is not –and has never been– a "specified substance". In fact, the 2009 version of the WADA Prohibited List expressly states that

"All Prohibited Substances shall be considered as "Specified Substances" except Substances in classes S1, S2, S.4.4 and S6.a, and Prohibited Methods M1, M2 and M3."

(emphasis added by the Panel)



4. During the hearing counsel for the Player referred to the circumstances surrounding the Adverse Analytical Finding and argued that the Player “bears no fault” for the anti-doping rule violation.
5. In that respect, Article 10.5 of the FIBA ADR provides that if a Player establishes that he bears no fault or negligence (10.5.1) or no significant fault or negligence (10.5.2) the otherwise applicable period of ineligibility shall be reduced or even eliminated. In the event that the Player has violated Article 2.1 of the FIBA ADR, like in the present case, he must also establish how the Prohibited Substance entered his system.
6. After reviewing the evidence before it, the Panel has serious doubts whether the administration of two “Primobolan Depot” injections some time in September 2008 can be considered as a plausible explanation for the presence of metenolone in the Player’s sample on 17 January 2009, i.e. approximately four months later. In addition, the player failed to provide any scientific evidence in support of his argument.
7. Further, even in the event that the Panel accepted that the anti-doping rule violation is a result of the above-mentioned use of “Primobolan Depot”, the Player could not benefit from the application of Article 10.5 of the FIBA ADR. The Panel finds that the Player acted –at least– negligently by ingesting a medication without ensuring that it does not contain a prohibited substance. FIBA and WADA have released numerous public warnings with regards to supplements or medication that can be purchased “over the counter” in some countries but may contain prohibited substances. Despite that, the Player did not bring forward any evidence, let alone convince the Panel, that he took any preventive measures (e.g. a simple internet research would suffice to know that “Primobolan Depot” contains metenolone, a well-known anabolic steroid which is expressly mentioned in the WADA Prohibited List) before receiving the injections upon advice of a trainer in a fitness center.



8. Lastly, the Panel is unable to find a connection between the Player's knee injury and the anti-doping rule violation. The Player received medical treatment in October 2007, approximately 1,5 year before the doping test in question, and in June 2009, i.e. six months after he submitted the positive sample. There is no evidence that such medical treatment relates to the presence of metenolone in his sample. The mere fact that the treatment used by the Ankara University clinic included injections is clearly not an explanation that injections of "Primobolan Depot" could also be part of a medical treatment. Besides, the Player did not report to the Ankara University clinic as he did in the abovementioned occasions, but wrongfully accepted the advice of a fitness-trainer.
9. Based on the above findings, the Panel holds that it is appropriate to impose on the Player a sanction of two (2) years.
10. The Panel deems fair pursuant to Article 10.9 of the FIBA ADR that the period of ineligibility is to start on 5 February 2009, as he was unable to play professional basketball since that date due to the suspension imposed by the Turkish Basketball Federation.
11. This decision is subject to an Appeal according to the FIBA Internal Regulations governing Appeals as per the attached "Notice about Appeals Procedure".

Geneva, 14 July 2009

On behalf of the FIBA Disciplinary Panel

Antonio Mizzi
President of the Disciplinary Panel